



Advanced Topics and Emerging Issues in Cancellation of Removal

2018 Executive Office for Immigration Review
Legal Training Program



Overview: LPR Cancellation of Removal, INA § 240A(a)

- **5 years of lawful permanent residence**
 - L.P.R. status must be lawfully obtained; one who acquired status by fraud or misrepresentation is not “lawfully admitted for permanent residence.” *Matter of Koloamatangi*, 23 I&N Dec. 548 (BIA 2003)
- **7 years of continuous residence after admission**
 - Admission in any status sufficient. *Matter of Castillo Angulo*, 27 I&N Dec. 194 (BIA 2018) (disagreeing with 5th, 9th Cir.)
 - Adjustment of status counts as an admission
 - Military service exception (INA § 240A(d)(3))

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Overview: LPR Cancellation of Removal, INA § 240A(a)

- **No aggravated felony conviction**
 - Bar applies even if not charged as ground of removal
- **Not barred under section 240A(c) of the Act**
- **Warrants favorable exercise of discretion**

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Overview: Non-LPR Cancellation, INA § 240A(b)(1)

- **10 years of continuous physical presence**
 - INA § 240A(d)(2): 90-day bar and aggregate 180-day bar
 - Military service exception (INA § 240A(d)(3))
- **Good moral character during 10-year period**
 - INA § 101(f) bars
 - Continuing application; gmc period measured from entry of final administrative decision; no stop-time. *Matter of Ortega-Cabrera*, 23 I&N Dec. 793 (BIA 2005)

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Overview: Non-LPR Cancellation, INA § 240A(b)(1)

- **Not convicted of an offense under sections 212(a)(2), 237(a)(2), or 237(a)(3) of the Act**

- Bar applies even if conviction is not basis for removal charge. *Matter of Almanza*, 24 I&N Dec. 771 (BIA 2009).
- Offense is “described under” regardless of immigration-related aspects of those sections. *Matter of Cortez*, 25 I&N Dec. 301 (BIA 2010); *but see Lozano-Arredondo v. Sessions*, 866 F.3d 1082 (9th Cir. 2017) (holding statutory language “offense under” is ambiguous).
- CIMT that qualifies for the petty offense exception is not “an offense under” section 212(a)(2)(A)(i)(I) but may be described under section 237(a)(2)(A)(i). *Matter of Almanza*; *Matter of Garcia-Hernandez*, 23 I&N Dec. 590 (BIA 2003).
- Inconclusive record does not meet applicant’s burden of proof.

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Overview: Non-LPR Cancellation, INA § 240A(b)(1)

- **Exceptional and extremely unusual hardship to a qualifying relative**

- “substantially beyond” (*Matter of Montreal*, 23 I&N Dec. 56 (BIA 2001))
 - *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002)
 - *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)
- *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) (no affidavit required to show child will remain in US with other parent)
- USC or LPR spouse, parent, or child
 - INA defines “child” as under 21. See *Matter of Isidro*, 25 I&N Dec. 829 (BIA 2012) (aging out)
 - includes stepparent and stepchild
- Aggregate analysis, but EEUH to “a” qualifying relative

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Overview: Non-LPR Cancellation, INA § 240A(b)(1)

- **Not ineligible under section 240A(c) of the Act**
 - Crewmen
 - Certain 101(a)(15)(J) educational exchange nonimmigrants
 - Inadmissible under 212(a)(3) or 237(a)(4)
 - Persecutors
 - Previous grant of similar relief
- **Warrants favorable exercise of discretion**

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What is admission “in any status?”

INA § 240A(a)(2) – alien “has resided in the United States continuously for 7 years after having been admitted in any status”

Matter of Fajardo Espinoza, 26 I&N Dec. 603 (BIA 2015); *Matter of Reza*, 25 I&N Dec. 296 (BIA 2010) - grant of Family Unity Program benefits (no)

Matter of Blancas, 23 I&N Dec. 458 (BIA 2002) – nonimmigrant with border crossing card (yes)

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Is a wave-through an admission “in any status?”

Matter of Castillo Angulo, 27 I&N Dec. 194 (BIA 2018)

Saldivar v. Sessions, 877 F.3d 812 (9th Cir. 2017)

Tula-Rubio v. Lynch, 787 F.3d 288 (5th Cir. 2015)

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